

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Amendment of Part 11	)	RM-10425
of the Commission's Rules	)	
(Emergency Alert System)	)	File No. EB-03-TS-153

**ORDER**

**Adopted: August 11, 2003**

**Released: August 13, 2003**

By the Chief, Enforcement Bureau:

1. In this *Order*, we dismiss as premature and without prejudice Lawson Associates's ("Lawson") Petition for Rulemaking ("*Petition*") filed on March 18, 2002. Lawson proposes that we amend Part 11 of the Commission's Rules ("Rules") relating to the Emergency Alert System ("EAS").<sup>1</sup> As noted below, Lawson's *Petition* comes before us at a time that the Commission's Media Security and Reliability Council ("MSRC")<sup>2</sup> is examining numerous issues related to public warning, including the EAS. After we receive and review MSRC's final recommendations, we will, if appropriate, release a *Notice of Inquiry* that may culminate in a rulemaking concerning public warning and the current EAS regulatory framework.

2. Lawson, an equipment manufacturer, asks that the Commission permit cable and wireless cable systems serving fewer than 5,000 subscribers to fulfill their EAS obligations by employing EAS decoders that will "pass-through" full EAS audio and video bulletins by switching all channels that do not carry those bulletins to one that does. In response to the *Public Notice* issued April 23, 2002, seeking comments on the *Petition*, three persons or entities, apart from Lawson, filed comments or reply comments.<sup>3</sup>

3. Among the national security-related duties the Commission discharges are implementation and enforcement of the EAS, which provides the President the capability to provide immediate communications and information to the American public at the national, state, and local levels during periods of national emergency.<sup>4</sup> Cable operators, like their broadcasting

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<sup>1</sup> See 47 C.F.R. §§ 11.1—11.61.

<sup>2</sup> The MSRC is a Federal Advisory Committee that draws its members from industry. For more information about the MSRC, visit <http://www.mediasecurity.org/>.

<sup>3</sup> *Public Notice*, Report No. 2544 (released Apr. 23, 2002); Commenters included the American Cable Association (supports *Petition*), BekTek, Inc. (opposes *Petition*), Michael Black (opposes *Petition*), and Lawson (supports *Petition*).

<sup>4</sup> See 47 C.F.R. § 11.1. For a history of the EAS, which originated with the Control of Electromagnetic Radiation or CONELRAD system of 1951 that President Truman established, see *Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the EBS*, 10 FCC Rcd 1786, 1788-89 (1994) ("*First Report and Order*"), *recon. granted in part and denied in part*, 10 FCC Rcd 11,494 (1995).



counterparts, must be capable of providing EAS messages to their subscribers.<sup>5</sup>

4. Since the *First Report and Order* in 1994, at which time the Commission moved from the Emergency Broadcast System or EBS to the EAS, the Commission has examined and refined cable operators's EAS obligations as technology and other constraints have changed. The Commission is cognizant of the issues facing small cable operators, which it has defined, with respect to EAS obligations, as those with 5,000 or fewer subscribers per headend.<sup>6</sup> Consequently, the Commission authorized the grant of waivers to small cable operators, on a case-by-case basis, where circumstances prevent them from fully complying with their EAS obligations.<sup>7</sup>

5. The Commission's *Second Report and Order* provided small cable operators with two options for complying with their EAS obligations by October 1, 2002: (A) Provide the national level EAS message on all programmed channels—including the required testing; or (B) Install EAS equipment and provide a video interrupt and audio alert on all programmed channels and EAS audio and video on at least one programmed channel.<sup>8</sup> Lawson asks the Commission to permit cable and wireless cable systems serving fewer than 5,000 subscribers to fulfill their EAS obligations (under option A) by employing EAS decoders that will "pass-through" full EAS audio and video bulletins by switching all channels that do not carry those bulletins to one that does.

6. Following September 11, 2001, as part of its response to the attacks on our country, the Commission established the MSRC. On May 16, 2003, subsequent to the issuance of the *Public Notice* in this proceeding, the MSRC's Public Communications and Safety Working Group ("Working Group") issued an *Interim Report* in which, among other things, it called for a broad assessment of public warning systems, including the EAS.<sup>9</sup> In June of 2003, the MSRC adopted the Working Group's recommendations regarding the EAS. The Working Group continues to study public warning issues, and may make additional recommendations which MSRC will vote on at its November meeting. After that time, we will, if appropriate, issue a *Notice of Inquiry* based, among other things, on the recommendations. We encourage Lawson and others interested in the vitality of the EAS to provide us with their comments on how we can improve public warning in general and the EAS in particular at that point.<sup>10</sup> In the meantime, we find it premature to engage in a rulemaking pertaining to one subpart of the EAS.

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<sup>5</sup> See 47 U.S.C. § 544(g); 47 C.F.R. §§ 11.1—11.61, 76.3, 76.1711; *Amendment of Part 11 of the Commission's Rules Regarding the EAS*, 17 FCC Rcd 4055 (2002) ("*February 2002 Report and Order*"); *Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the EBS*, 14 FCC Rcd 1273 (1997); *Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the EBS*, 12 FCC Rcd 15,503 (1997) ("*Second Report and Order*"); *First Report and Order*.

<sup>6</sup> *Second Report and Order*, 12 FCC Rcd at 15,507-19; *February 2002 Report and Order*, 17 FCC Rcd at 4056, 4082-83 (e.g., small cable operators permitted to fulfill their EAS obligations by installing EAS decoders, rather than both encoders and decoders).

<sup>7</sup> See 47 C.F.R. §§ 0.111, 0.204(b), 0.311; *Second Report and Order*, 12 FCC Rcd at 15,513. We have been issuing term-limited waivers. See, e.g., *Pinpoint Communications, Inc.*, DA 03-2519 (Enf. Bur., released July 30, 2003).

<sup>8</sup> See 47 C.F.R. § 11.11; *Second Report and Order*, 12 FCC Rcd at 15,503-04, 15,507-19.

<sup>9</sup> MSRC, Public Communications and Safety Working Group, *Interim Report* (released May 16, 2003).

<sup>10</sup> See also May 19, 2003, Letter from Robert M. Hill, proposing creation of a National Readiness Network.



7. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4, 303(r), 624(g), and 706 of the Communications Act of 1934, as amended,<sup>11</sup> and Sections 0.111, 0.311 and 1.401(e) of the Rules, Lawson Associates's Petition for Rulemaking (RM-10425) **IS DISMISSED WITHOUT PREJUDICE**.

**FEDERAL COMMUNICATIONS COMMISSION**

David H. Solomon  
Chief, Enforcement Bureau

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<sup>11</sup> 47 U.S.C. §§ 154, 303(r), 544(g), 606; 47 C.F.R. §§ 0.111, 0.311, 1.401(e).